

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal Case No.
)	1:17-cr-00027-JPJ-PMS-1
vs.)	
)	
JOEL A. SMITHERS,)	TESTIMONY OF BRYAN HARLOW
)	ONLY
Defendant.)	

PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 2
HONORABLE JUDGE JAMES P. JONES PRESIDING
TUESDAY, APRIL 30, 2019

A P P E A R A N C E S

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Proceedings taken by Certified Court Reporter and transcribed
using Computer-Aided Transcription

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Official Court Reporter for the U.S. District Court Western District of Virginia

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1 (Requested transcript of Bryan Harlow only of the
2 proceedings commenced at 1:23 p.m.)

3 MR. JUHAN: Your Honor, the United States calls
4 Bryan Harlow.

5 THE CLERK: Do you solemnly swear that the testimony
6 you're about to give in this case shall be the truth, the
7 whole truth, and nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: You may be seated.

10 **BRYAN HARLOW,**

11 Called as a witness herein by the Defense, having been first
12 duly sworn, was examined and testified as follows:

13 **DIRECT EXAMINATION**

14 BY MR. JUHAN:

15 Q. Hello, sir.

16 A. Hello.

17 Q. Please tell the jury who you are.

18 A. My name is Bryan Harlow.

19 Q. Do you spell your name Brian with an "I" or "Y"?

20 A. B-r-y-a-n.

21 Q. Okay. And your address is 24 -- 294 Runyon Branch,
22 Pinsonburg, Kentucky; is that right?

23 A. Pinsonfork.

24 Q. Pinsonfork, I'm sorry.

25 And you used to be a coal miner; correct?

1 A. That's what I do, yes.

2 THE COURT: Sir, if you'll speak into the
3 microphone, just speak straight into the microphone. All
4 right.

5 THE WITNESS: Yes, I do work as a coal miner.

6 BY MR. JUHAN:

7 Q. You still work now?

8 A. I do now, yeah.

9 Q. Okay. Is Pinsonfork, Kentucky, near Mount Sterling,
10 Kentucky?

11 A. No, not -- no. I mean -- Mount Sterling, not really, no.

12 Q. Okay. Who is your girlfriend?

13 A. Michelle Smith.

14 Q. And you and Miss Smith rode over here today; correct?

15 A. We what?

16 Q. Did you guys come over together?

17 A. Oh, yes.

18 Q. Okay. And, in fact, Ms. Smith has given you some of her
19 pain medication before, hasn't she?

20 A. Yes.

21 Q. And when was this happening?

22 A. When I was run out long times and just whenever. Most of
23 the time, I mean, I would take quite a bit.

24 Q. Okay. This -- so 2015?

25 A. 2015? Oh, pills. Sure. Well, probably, or more. More

1 than half, I would say. I would probably take more than half
2 of hers.

3 Q. Fair to say, you're addicted to pills, sir?

4 A. I am. I was.

5 Q. And you were addicted to pills in 2015 through 2017?

6 A. Yes, I was.

7 Q. And we're talking about pills, what particular kinds of
8 pills were you addicted to?

9 A. Just more -- any pain medicine. I had had surgery and I
10 got, you know, started taking them and just more and more.

11 Q. What about oxycodone?

12 A. Yes.

13 Q. What about oxy -- what about hydrocodone?

14 A. Yes.

15 Q. Now, at some point in time you originally -- or at some
16 point in time you saw Dr. Joel Smithers; is that right?

17 A. Yes.

18 Q. But there was a doctor you were going to before him?

19 A. Yes.

20 Q. And what happened with that doctor?

21 A. They said that they -- they told me that -- I don't know
22 how that happened, but they said I didn't have the medicine in
23 my system. They gave me a urine test and told me I didn't
24 have the medicine in my system and I couldn't come back. My
25 compensation was running out, and I was on compensation at

1 that time seeing that doctor and it was coming down to a
2 close. They told me I didn't have it in my system.

3 Q. So the doctor kicked you out?

4 A. Pretty much.

5 Q. Wouldn't let you come back.

6 And after that is when you went to see Dr. Smithers?

7 A. I don't know the timeframe, I mean, really on that.

8 Q. Okay. Where did you go and see Dr. Smithers?

9 A. In Martinsville.

10 Q. Virginia?

11 A. Virginia.

12 Q. But you live in Kentucky?

13 A. Yes.

14 Q. And you lived in Kentucky when you were going to see
15 Dr. Smithers?

16 A. Yes.

17 Q. So how long was this drive that you would take to
18 Dr. Smithers from Kentucky all the way to Martinsville?

19 A. For me?

20 Q. Yeah.

21 A. Four, five hours.

22 Q. And then you have to drive back?

23 A. Yes.

24 Q. So 8 to 10-hour round trip; right?

25 A. Pretty close, yeah.

1 Q. Why would you drive 8 to 10 hours to see a doctor two
2 states over?

3 A. There wasn't -- there wasn't no doctors in my area like
4 that to see.

5 Q. None --

6 A. No other doctors, I mean, in that area. In my area.

7 Q. That would give you the pills you wanted?

8 A. For that kind, yes.

9 Q. So let's talk about how it came about that you ended up
10 seeing Dr. Smithers. Do you know a guy named Darryl Williams?

11 A. Yes, I do.

12 Q. And so how did you get connected with Dr. Smithers?

13 A. Well, I was getting -- I mean, off the street, I would
14 get the pills off of Darryl, and he kind of told me that's
15 where he was -- he's set me up.

16 Q. So fair to say that you knew about Dr. Smithers from
17 Darryl Williams?

18 A. Mm-hmm. Yes.

19 Q. And so Mr. Williams approached you about going to see
20 Smithers. Why? What was the deal?

21 A. Well --

22 MR. WILLIAMS: Your Honor, I object to hearsay to
23 whatever Mr. Williams told him.

24 MR. JUHAN: It's not for the fact, Your Honor. I'm
25 trying to understand why he did what he did.

1 THE COURT: Well, is it part of a conspiracy, do you
2 believe?

3 MR. JUHAN: That also, Your Honor.

4 THE COURT: All right. I'll overrule the objection.

5 BY MR. JUHAN:

6 Q. So what was the deal when Mr. Williams came to you? Why
7 was he coming to you?

8 A. Well, I was -- I was buying the pills off of him to try
9 to -- to make my cost lower. I asked him, you know, to get me
10 in to see the doctor. That's how that happened. He made the
11 appointment and told me when to go, and I went.

12 Q. Why were you driving to go see Dr. Smithers? What did
13 you get out of it?

14 A. Just the drug -- the pills. That's what it was about.

15 Q. So it wasn't a legitimate medical reason for going to see
16 him?

17 A. Well, I mean, not that type, I would say, I guess, you
18 know, I would say. I mean, I do have pain in my shoulder.
19 Had a torn rotator cuff previously. I did have pain, but
20 probably --

21 Q. Who would pay for you to go see Dr. Smithers?

22 A. Darryl.

23 Q. So how would that work? Before you leave Kentucky, how
24 does it go from the time you leave to the time you get back,
25 money-wise?

1 A. He -- sometimes he would give me the money. Sometimes, I
2 mean, you know, he would have -- they would have to wait. I
3 mean, it was just -- I mean, then he would wire it down or
4 whatever. I mean, just -- and then you would go and pick up
5 the money and then go to the doctor.

6 Q. How much money would he give you at one time?

7 A. I think like 3-, \$400, just enough to pay for the gas and
8 something to eat or whatever and the doctor visit.

9 Q. So you give Dr. Smithers the money, you get your
10 prescriptions; right?

11 A. Yes.

12 Q. Who pays for the pharmacy -- well, when they get filled,
13 who pays for that?

14 A. Darryl.

15 Q. How much does that cost?

16 A. Eight -- \$9,000, I guess. You know, 800, 900, you know,
17 just different which one -- pharmacy you go to.

18 Q. So one trip, when you add up the office visit plus the
19 pills, is at or about a thousand dollars?

20 A. Yeah, \$1,500 probably.

21 THE COURT: I can't understand you, sir.

22 THE WITNESS: \$1,500.

23 THE COURT: Okay. So all together \$1,500 to pay the
24 doctor and --

25 THE WITNESS: Yeah, and pills.

1 THE COURT: Wait a minute. And pay the pharmacy;
2 right?

3 THE WITNESS: Yes.

4 THE COURT: Okay. Go ahead.

5 BY MR. JUHAN:

6 Q. How would the pill exchange work after you got the pills
7 and the prescriptions from Dr. Smithers? Between you and
8 Darryl, how would that work?

9 A. I would bring -- I mean, you would bring the pills back
10 and you'd count. He would get half and you would get the
11 other half.

12 Q. Would he fill the scripts sometimes?

13 A. Sometimes, yes.

14 Q. How many people, to your knowledge, have the same --

15 THE COURT: I'm not sure I follow. The question
16 was, "Would he fill the scripts sometimes?" What do you mean
17 by that.

18 MR. JUHAN: The prescriptions, I'm sorry.

19 THE COURT: I know that. But "would he fill
20 them," take them to a pharmacy or what?

21 BY MR. JUHAN:

22 Q. Who would take them to the pharmacy, the prescriptions?

23 A. Sometimes it would be just -- sometimes it would be
24 Darryl, you know, would take them. Sometimes I would take
25 them. Sometimes, I mean, he would just drop the scripts off

1 and your ID, they would be filled and somebody would bring
2 them back. Just different ones -- pills.

3 Q. So sometimes you would drop them off but someone else
4 would pick up?

5 A. No, I mean --

6 Q. I'm trying to understand what you're saying.

7 A. No, not really. You would get them back usually that
8 same day. So if you went, you got them. Sometimes, I mean,
9 there would be more than one, and they would just --

10 THE COURT: So let me understand, just to make sure
11 I understand how this worked. So Mr. Williams would give you
12 the money before you came from Kentucky to Martinsville,
13 right, to see the doctor?

14 THE WITNESS: Most of the time. Sometimes he
15 wouldn't. I mean, sometimes he wouldn't have it all together
16 or something, I guess, and he would wire it to, like, a
17 Walmart or whatever in Virginia.

18 THE COURT: Okay. But he paid the doctor; right?

19 THE WITNESS: Not physically. You know, I paid --
20 he paid for it, yes. It was his money, yes.

21 THE COURT: Well, right, that's what I meant.

22 THE WITNESS: Yes.

23 THE COURT: However you -- however Dr. Smithers got
24 the money, it came from Mr. Williams; right?

25 THE WITNESS: Yes.

1 THE COURT: But you would be the patient. And you
2 would go to Dr. Smithers and get the prescription; --

3 THE WITNESS: Yes.

4 THE COURT: -- right?

5 And then you are -- Mr. Williams would take the
6 prescription to a pharmacy and get it filled. And, again,
7 Mr. Williams was paying for the pharmacy.

8 THE WITNESS: Yes.

9 THE COURT: All right. Okay. And so that's the
10 way -- and then you would split the pills; he would get half
11 of them and you would get half of them.

12 THE WITNESS: Yeah. Yes.

13 THE COURT: Okay. Go ahead.

14 BY MR. JUHAN:

15 Q. Who else had this arrangement that you know of with
16 Mr. Williams?

17 A. There was three -- you know, Michelle, she had it. And
18 there was a few others that -- I mean, I really don't know how
19 many. But --

20 Q. What about Greg Harlow?

21 A. Yes, he had.

22 Q. What about Geneva Bowman?

23 A. She had one, yeah, I don't --

24 Q. What about Michael Robinette?

25 A. Yes. I mean, I don't know their deals, but I know they

1 went in too.

2 Q. Would Dr. Smithers ever mail you pills in the mail?

3 A. Not to me. But I'm assuming that's where they come from.

4 They didn't come to my house, they come to --

5 Q. Sir, do you remember testifying in front of the grand
6 jury in September of 2017?

7 A. Yes.

8 Q. Do you remember swearing an oath to tell the truth?

9 A. I mean, they didn't come to my house. But they were
10 delivered in the mail, I guess, I mean, is what they said.

11 Q. So let me ask my question again then. Would there ever
12 be prescriptions mailed from Dr. Smithers to your home?

13 A. Not to my home. Not to my house. It was to Darryl's
14 house, I guess, is where they was sent to.

15 Q. So maybe I'm asking it poorly then. Would prescriptions
16 that were your prescriptions be mailed to Darryl Williams's
17 house?

18 A. I'm assuming -- that's what they said, the way they said
19 they were --

20 MR. WILLIAMS: Objection as to hearsay, Your Honor.

21 THE WITNESS: I don't know how they --

22 THE COURT: Excuse me. I'll overrule the objection.

23 Well, so these pills, they were for prescriptions in
24 your name, but they were mailed to Mr. Williams; is that
25 right?

1 THE WITNESS: I didn't see the doctor. And they --
2 we got prescriptions, so.

3 THE COURT: I know. But they were prescriptions
4 that were supposedly for you; --

5 THE WITNESS: Yes.

6 THE COURT: -- is that right?

7 THE WITNESS: Yes.

8 THE COURT: Did they have your name on the bottle,
9 on the pill bottle?

10 THE WITNESS: The bottle, yes.

11 THE COURT: So they were for you, but you didn't see
12 the doctor. You got them from Mr. Williams who must have
13 gotten them some other way.

14 THE WITNESS: I didn't see the prescription, you
15 know, when it was -- he got the prescription, you know, so I
16 don't know. I can't answer that.

17 THE COURT: Well, but you said the pill bottle had
18 your name on it.

19 THE WITNESS: Oh, yes. They were mine. I mean,
20 just to say -- yes, they were mailed. I mean, he told me
21 that, you know, in the bad months in the winter that we
22 wouldn't have to drive and that they would be mailed. So that
23 was one of the times that I didn't go get mine picked up and
24 they were --

25 THE COURT: And you didn't see the doctor --

1 THE WITNESS: -- the pills were there.

2 THE COURT: You didn't see the doctor to get those
3 pills?

4 THE WITNESS: No. Not that time, no. Two or three
5 times, I think, at the most.

6 THE COURT: Okay. Go ahead.

7 BY MR. JUHAN:

8 Q. So I want to focus on the time that you yourself would
9 fill the prescriptions. In what states would you fill those
10 prescriptions?

11 A. West Virginia.

12 Q. What about Indiana?

13 A. I never went there.

14 Q. If -- so if a prescription was filled under your name
15 from a place in Indiana, that wouldn't have been you that
16 filled it; right?

17 A. No.

18 Q. What about Virginia?

19 A. Oh, yes, I do.

20 Q. When you went to Dr. Smithers's office, what kind of
21 staff did he have there?

22 A. There was a guy there one time, and I don't know his
23 name. Then the one time there was a receptionist. And then
24 the other few times there was another guy that was giving
25 urine test and taking blood pressure.

1 Q. Do you remember getting interviewed by the DEA agents on
2 August 10th of 2018?

3 A. Yes.

4 Q. And you would have tried to tell them the truth; right?

5 A. Yes.

6 Q. Do you remember telling them that there wasn't any nurses
7 or receptionist, just Dr. Smithers?

8 A. Not that, no.

9 Q. You don't remember telling them that?

10 A. Not exactly that. I mean, there was a lady there, she
11 wasn't -- there wasn't no nurses. And there was just this guy
12 who you give your money to. Sometimes he would take your
13 blood pressure -- I took a blood pressure, I don't know, I
14 can't really remember who took my blood pressure. But he
15 would take the money. And he said he was a cop. I don't know
16 what his name was really. And then, but then there was one
17 time whenever we showed up, there was a lady there. But
18 whenever I walked in, she was leaving.

19 Q. It's fair to say it's pretty small staff, huh?

20 A. Yes.

21 MR. WILLIAMS: Objection. Calls for speculation.
22 It's argumentative.

23 THE COURT: Overrule the objection.

24 BY MR. JUHAN:

25 Q. Did you get oxycodone from Dr. Smithers?

1 A. Oxycodone, yes.

2 Q. You didn't really need that, did you?

3 A. What?

4 Q. You didn't really need the oxycodone, did you?

5 A. No.

6 Q. Did Dr. Smithers ever warn you about the effects of the
7 medicine he was giving you?

8 A. I can't really remember.

9 Q. Well, you said earlier you remember talking to the agents
10 on August 10th, 2018; correct?

11 A. Somewhat, yes. I mean, but, I don't -- I can't remember.
12 I mean -- I don't know.

13 Q. So do you think maybe that if you saw the report from
14 that interview it might refresh your recollection about what
15 you told the agents?

16 A. Maybe.

17 MR. JUHAN: Your Honor, may I approach?

18 THE COURT: You may.

19 MR. WILLIAMS: Your Honor, I would argue that that's
20 a hearsay statement if he's looking at what the agents have
21 written. I think that's a hearsay statement. I don't think
22 it would be subject to be refreshing recollection.

23 THE COURT: I'll overrule the objection.

24 Go ahead.

25 ///

1 BY MR. JUHAN:

2 Q. Now, sir, I just want you to read this to yourself and
3 not speak aloud. Okay. I've underlined that sentence for
4 you. Let me know when you're done reading.

5 A. Okay.

6 Q. Now, does that refresh your recollection about whether
7 Dr. Smithers ever counseled you about the effects of the
8 medicine he was giving you?

9 A. I guess not. You know, it was -- I don't really
10 remember. I mean, a lot -- it's been -- not that I remember.
11 I mean, I really don't remember what we all talked about. It
12 wasn't really much anything. I mean, it was just in and out.

13 Q. So you and Dr. Smithers really didn't talk about anything
14 when you came to your appointments, did you? That's your
15 testimony.

16 A. Not -- I mean, how was he paying. You'd tell him, you
17 know, it's this and --

18 Q. No exam really?

19 A. No.

20 MR. JUHAN: No further questions, Your Honor.

21 THE COURT: All right. Cross-examination.

22 **CROSS-EXAMINATION**

23 BY MR. WILLIAMS:

24 Q. Good afternoon, Mr. Harlow. How are you?

25 A. Okay.

1 Q. Okay. Now, Mr. Juhan was talking to you there a little
2 bit about the -- about your recollection and stuff of whether
3 or not you had been counseled by Dr. Smithers. You don't
4 really remember, do you, whether or not he counseled you?

5 A. Not really what was said. I mean, not -- I mean, it
6 really wasn't anything. I mean, it was just in and out. I
7 mean, but --

8 Q. Now, you had stated earlier you had this agreement with
9 Darryl Williams; is that correct?

10 A. Yes.

11 Q. Okay. You obviously never told Dr. Smithers that, did
12 you?

13 A. He -- no, I didn't come out and say this, but he knew
14 where it was coming from. He would -- I would tell him
15 sometimes that I was waiting on Darryl.

16 Q. Okay. Now did -- with respect to -- do you recall
17 signing an Opioid Maintenance Therapy Agreement with
18 Dr. Smithers?

19 A. Do I remember signing that?

20 Q. Yeah.

21 A. No, I don't remember signing that.

22 Q. I'm going to show you this --

23 MR. WILLIAMS: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

1 BY MR. WILLIAMS:

2 Q. I'm going to show you BH page 12, also to page 13. I'd
3 ask you just to look at that real quick.

4 Page 13.

5 Is that your signature down at the bottom?

6 A. Yes, it is.

7 Q. Okay. And --

8 MR. JUHAN: Mr. Williams, I'm sorry, what page are
9 we on?

10 MR. WILLIAMS: 12, 13.

11 BY MR. WILLIAMS:

12 Q. And did you read that statement when you signed it?

13 A. Probably read, looked over it.

14 Q. Dr. Smithers went over it with you, didn't he? Did he
15 read it to you?

16 A. Nah. Well, probably -- I don't think so.

17 Q. Okay.

18 A. He was -- the first time I went was, like -- the first
19 time I seen the doctor was at, like, 1:00 at night. I really
20 can't remember, I mean, what went on that night.

21 Q. But this is your signature on this document; correct?

22 A. Yes, it is.

23 THE COURT: Let me ask you this. You saw him at
24 1:00 at night. His office was open at 1:00 at night?

25 THE WITNESS: We were there that long day, yes, the

1 first time I went. And probably a couple other times. I
2 mean, it was really late.

3 THE COURT: Okay. Go ahead.

4 BY MR. WILLIAMS:

5 Q. And when you signed that Opioid Maintenance Therapy
6 Agreement, did you read and understand that No. 8 said, "You
7 may not give or sell your medications to any other person
8 under any circumstances. If you do, you could endanger that
9 person's health and it's also against the law."

10 You don't recall signing that document?

11 A. Yes, I remember. I mean, I don't remember -- I mean
12 exactly. I do now that you showed me. I know that I would
13 have signed that, yes. Probably would have looked over it and
14 read it, but --

15 Q. Paragraph 10 says you agree to cooperate fully with him,
16 right? Provide him good information?

17 A. Yes.

18 Q. Okay. And -- but your testimony is here today that you
19 didn't have anything really wrong with you; is that what
20 you're saying?

21 A. No, I'm not saying I didn't have anything wrong with me.

22 Q. You were injured in a coal mine, weren't you?

23 A. Yes, I was.

24 Q. Okay. You had an MRI that was done --

25 A. Yes, I did.

1 Q. -- that was provided to Dr. Smithers. It was of your
2 right shoulder and cervical spine, wasn't it?

3 A. Yes.

4 Q. That's part of your medical record, isn't it?

5 A. Yes.

6 Q. Okay. And so did you have pain or did you not?

7 A. I had somewhat pain, yes.

8 Q. Okay. And, in fact, when you went in on 9-3-15, do you
9 remember Dr. Smithers going over the intake form with you?

10 A. I can't say I remember, no. But I'm sure --

11 Q. Okay. It says that the pain began on 6-10-13, and you
12 were injured in a coal mine; does that correct?

13 A. Yes, I was.

14 Q. It states that you had hot burning pain, shooting pain,
15 stabbing and sharp pain, cramping, numbness. Does that sound
16 like what you reported to him?

17 A. Yeah. Probably, yes.

18 Q. Was that true?

19 A. At the time, yes, I did have.

20 Q. Okay. And so your pain says it was at worst in the
21 mornings and evenings; is that correct?

22 A. Yes.

23 Q. Okay. And said your pain, the worst it got was 10 and
24 the best it got was 8; was that correct?

25 A. That's probably what I put down, yes.

1 Q. Okay. So that was -- you agree with that, okay?

2 A. Yes.

3 Q. You agree, you said your pain increased with changes in
4 the weather and climbing stairs and rising from a seated
5 position; does that sound correct?

6 A. Mmm, yes.

7 Q. Okay. Walking and standing also.

8 Had you had -- it says you had physical therapy
9 before. Have you had physical therapy before?

10 A. Yes, I had.

11 Q. Okay. And said it had no change on you, is that -- said
12 it had no effect on you; is that correct?

13 A. No. I mean yes, that's correct.

14 Q. Okay. Massage therapy hadn't worked; is that right?

15 A. What's --

16 Q. Massage therapy hadn't worked for you?

17 A. No.

18 Q. Or TENS unit or any --

19 A. Really, no. It really didn't help, no.

20 Q. Okay. Said that you had some numbness and tingling down
21 your feet and hands and down your legs; is that correct?

22 A. Yes.

23 Q. It said you had an MRI of your shoulder and neck. Does
24 all that sound correct?

25 A. That I had one, yes. I did have one.

1 Q. Okay. Now you had gone through and seen him on other
2 occasions, had you not?

3 A. I didn't hear you.

4 Q. You had seen him on other occasions, had you not?

5 A. Seen who?

6 Q. Dr. Smithers.

7 It says on 4-25-16 you saw him. Do you recall that
8 day?

9 A. I don't know -- I don't remember dates. I don't remember
10 dates, I mean.

11 Q. It says you were complaining of right shoulder pain and
12 lower back pain; is that correct?

13 A. Yes.

14 Q. Does that sound about right during that time? It says
15 your pain was eight to six. Does that sound correct?

16 A. I guess, yes.

17 Q. Okay. Said you had moderate controlled pain through your
18 prescriptions. Did you report that to him that your medicines
19 were working? Did you have a moderate control of it? Is that
20 true or is it not?

21 A. Well, actually, I don't -- I think I would put 10s all
22 down through there, then I would have 10s on my pain. Then I
23 was told --

24 Q. So your pain was so bad --

25 THE COURT: Wait a minute. Wait a minute. Let him

1 finish.

2 THE WITNESS: Yeah, I think I remember I was told
3 that I have to change. I have to make it look like the
4 medicine was working.

5 BY MR. WILLIAMS:

6 Q. That was Darryl Williams told you that?

7 A. Yes, someone. No, actually, it was the doctor I believe
8 that told me we had to change those 10s. We couldn't put 10s
9 on there all the time.

10 THE COURT: The doctor you're speaking about is
11 Dr. --

12 THE WITNESS: Smithers.

13 THE COURT: He told you what now?

14 THE WITNESS: We couldn't put 10s on there all the
15 time, that we had to make it look like the medicine was
16 working.

17 THE COURT: Okay.

18 BY MR. WILLIAMS:

19 Q. Now, you had applied for your disability, had you not?

20 A. I tried, yes.

21 Q. Okay. Showed that you had a rotator cuff tear, is
22 that --

23 A. Yes.

24 Q. -- part of the smoke shoulder injury?

25 A. What's that?

1 Q. Was that part of the same shoulder injury or was that a
2 different injury?

3 A. Yes.

4 Q. Now, did Dr. Smithers do drug testing and pills?

5 A. I think, yes. I did take one. When you would go in for
6 the -- on the -- yeah, it was pill counts and drug tests.

7 Q. Were you discharged from Dr. Smithers's care?

8 A. Was I discharged?

9 Q. Yeah.

10 A. No.

11 Q. On page 59 of the record it says that you were taking
12 Oxycontin before; is that right?

13 A. I had taken it before, yes.

14 Q. Okay. Oxycontin 30?

15 A. Yes.

16 Q. Okay. You'd taken Oxycontin 15-milligram?

17 A. Yes.

18 Q. You had taken Opana, which is the oxymorphone ER, that's
19 extended release; is that right? Do you recall telling him
20 that?

21 A. No.

22 Q. Okay. Didn't tell him that you had been taking
23 30 milligrams, 30 to 40 milligrams?

24 A. I don't remember. Because I --

25 Q. Possible you told him that though?

1 A. Yes, it was possible, I mean.

2 Q. Had you taken that before?

3 A. Not the Opana, no.

4 Q. So that would have been a lie on what you had told him;
5 correct?

6 A. Probably, yes. That was just probably what I was told to
7 tell him, I mean.

8 Q. Now, there was some times that you hadn't seen
9 Dr. Smithers, wasn't there?

10 A. There was what?

11 Q. A period of time when you said prescriptions were mailed
12 to you, weren't they?

13 A. I'm guessing.

14 Q. Mailed to someone.

15 A. They were mailed to someone, yeah.

16 Q. Okay. You -- wasn't there some bad weather or something
17 during that time?

18 A. It was just winter time coming up and the drive only
19 drove so far. He said that they could be mailed to you and
20 you wouldn't have to go see the doctor, you can do that so
21 many times or something.

22 Q. Okay. And that was mailed to you, what, a couple times
23 or something?

24 A. Two, maybe three.

25 Q. All right.

1 MR. WILLIAMS: No further questions, Your Honor.

2 THE COURT: All right. Anything further?

3 MR. JUHAN: No, Your Honor.

4 THE COURT: All right. Thank you, sir. You may
5 step down.

6 THE WITNESS: Thank you.

7 (Testimony of Bryan Harlow concluded at 1:52 p.m.)

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1 REPORTER'S CERTIFICATE

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3 I, DONNA J. PRATHER, do hereby certify that the

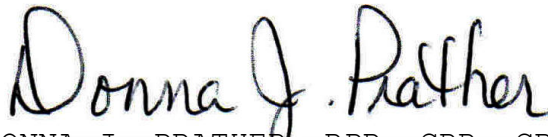
4 above and foregoing, consisting of the preceding 28 pages,

5 constitutes a true and accurate transcript of my stenographic

6 notes and is a full, true and complete transcript of the

7 proceedings to the best of my ability.

8 Dated this 23rd day of May, 2019.

9 

10 DONNA J. PRATHER, RPR, CRR, CBC, CCP
11 Federal Official Court Reporter

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